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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 7151/2024 & CRL.M.A. 27302/2024, CRL.M.A. 27303/2024

RAM MARVADI

.....Petitioner

Through: Mr. Varun Bhati and Mr. Bilal A.
Khan, Advocates.

versus

STATE GNCTD OF DELHI & ANR.

.....Respondents

Through: Mr. Utkarsh, APP for the State with
W/SI Arti Singh, P.S. Najafgarh.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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25.10.2024

CRL.M.A. 27304/2024

Exemption granted, subject to just exceptions.

The application stands disposed of.

CRL.M.C. 7151/2024

By way of the present petition filed under section 528 of the Bharatiya Nagarik Suraksha Sanhita 2023, the petitioner impugns order dated 08.10.2021 made by the learned Additional Sessions Judge (FTSC) (RC), South-West District, Dwarka Courts, Delhi in SC No.230/2021 arising from case FIR No.944/2020 dated 21.12.2020 registered under sections 376/328/354-C/506/509 of the Indian Penal Code, 1860 ('IPC') at P.S. Najafgarh, Delhi, whereby the learned Sessions Court has been pleased to frame charges against the petitioner under sections 376/328/354-C/385/506 of the IPC.

2. Though at the outset, Mr. Varun Bhati, learned counsel appearing for the petitioner was queried as to why a challenge to order dated



08.10.2021 was filed on 07.09.2024 *i.e.*, after a nearly 03-year delay, Mr. Bhati submits that the delay was occasioned by reason of the fact that the petitioner was in judicial custody in another matter in Rajasthan over part of that period; and was therefore unable to follow-up the matter in Delhi.

3. Counsel has drawn attention of this court to the allegations in the subject FIR, which relate to several incidents of physical relations having allegedly been made by the petitioner with the prosecutrix *in October and November 2020*.
4. Counsel submits however, that in her statement dated 31.12.2020 recorded under section 164 of the Code of Criminal Procedure 1973, the prosecutrix has admitted that the physical relations made between the parties were consensual; and therefore the gravamen of the offences alleged, especially the offence under section 376 of the IPC, is missing.
5. It is also pointed-out, that in the course of the hearing on the petitioner's bail plea before the learned Sessions Court, yet again the prosecutrix has admitted that she was in a relationship with the petitioner; and that thereafter her marriage was fixed with someone else, but since that marriage broke, "*under the confusion and anger*" the prosecutrix lodged the complaint against the petitioner under the belief that the petitioner was responsible for breaking her proposed marriage. Learned counsel has also drawn attention to the fact, that at the said hearing, the prosecutrix has also admitted that the video-footage found on her mobile phone had in fact been *recorded on her phone only*.



6. Furthermore, counsel submits that upon being queried by the learned Sessions Court, the Investigating Officer ('I.O.') has also stated that certain WhatsApp chats were found to have been deleted from the prosecutrix's mobile phone and even the video-footage in question was found in the 'deleted' folder of her mobile phone. The I.O. has further clarified to the learned Sessions Court that in the video-footage, the prosecutrix was *not* found to be in an unconscious state, contrary to what has been alleged in the subject FIR.
7. Most importantly, learned counsel for the petitioner submits, that while framing of charges by way of the impugned order, the FSL report in respect of the video-footage seized from the prosecutrix's mobile phone was not available before the learned Sessions Court, since the matter was pending examination with the FSL. He submits however, that the FSL has now rendered its report dated 19.05.2022, in which they have confirmed that no *chat* or *obscene* video file was found in the data retrieved from the petitioner's mobile phone (MP-01), though certain obscene images were found on that phone. The FSL has said that, on the other hand, an obscene video file dated 29.11.2020 was found in the data retrieved from the prosecutrix's mobile phone (MP-02).
8. Counsel submits, that if the video-footage retrieved from the prosecutrix's own mobile phone is viewed, it would belie the allegation that physical relations between the parties were not consensual.
9. Counsel also submits, that based on the FSL report received, the I.O. has now filed a supplementary charge-sheet dated 25.11.2022; and it is extremely relevant for the learned Sessions Court to view the video-



footage as now verified by the FSL report; and at the very least, to modify the charges framed *vide* order dated 08.10.2021 based on the video-footage.

10. Learned counsel for the petitioner has also shared with this court certain aspects, of what he says would be seen in the video-footage, to submit, that that would completely belie the allegation of non-consensual physical relations between the parties; and would therefore impact the framing of charge under section 376 of the IPC. Counsel submits that the fact that the video-footage was recorded on the prosecutrix's own mobile phone would also belie certain other charges that have been framed against the petitioner.
11. Issue notice.
12. Mr. Utkarsh, learned APP appears on behalf of the State on advance copy; and accepts notice; and submits that it is indeed true that certain video files which would have a bearing on the matter have been found *not* on the petitioner's mobile phone, but on the mobile phone of the prosecutrix herself.
13. Learned APP further submits, that it is also correct that the video file in question was not available before the learned Sessions Court at the time charges were framed *vide* order dated 08.10.2021; and that, as per his instructions, a viewing of the video file would have material relevance on the charges that are liable to be framed against the petitioner.
14. Though the prosecutrix has been impleaded as party-respondent No.2 in the present proceedings, and is otherwise entitled to be heard in the matter, however, in view of the course of action that this court proposes



to take, it is not considered necessary to issue notice or to await the presence of the prosecutrix before dealing with the present petition.

15. In the circumstances, this court is of the view that the appropriate course of action in the proceedings would be to *remand* the matter back to the learned trial court to conduct a *fresh hearing* on the question of framing of charges, after duly considering the video-footage and other electronic data, that has now been verified *vide* FSL report dated 19.05.2022; and to *grant to the parties a right of hearing* and frame charges afresh, if warranted in law.
16. Accordingly, order dated 08.10.2021 made by the learned Sessions Court in SC No.230/2021 is set-aside and the matter is remanded back to the learned trial court for hearing afresh on the question of framing of charges.
17. The petition is disposed-of in the above terms.
18. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

OCTOBER 25, 2024

V.Rawat